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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,745	04/18/2000	Daniel Manuel Dias	AM9-98-080C	2613
7590	10/07/2004		EXAMINER	
John L Rogitz Rogitz & Associates 750 B Street Suite 3120 San Diego, CA 92101			NAMAZI, MEHDI	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/551,745	DIAS ET AL.	
	Examiner	Art Unit	
	Mehdi Namazi	2188	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 July 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-6,8,11-14,16-18 and 20-22 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1,3-6,8,11-14,16-18, 20, and 21 is/are allowed.
- 6) Claim(s) 22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This office action is in response to applicant's request for reconsideration filed July 8, 2004.

Response to Arguments

2. Applicant's arguments filed on July 8, 2004 have been fully considered but they are not persuasive.

In response to applicant's argument examiner agrees with applicant's statement that "controller 50 is not part of disk 10". However, Fig. 6 clearly shows that controller 50 is included in the memory system with the disk and buffer 53 is a part of controller 50. Data is requested based on priority deadline and the data will be transfer to buffer 53 based on transfer rate related to the internal state of the disk.

In response to applicant's argument examiner disagrees with applicant's statement that "it appears from applicant's files that above specification portions were indeed present in the parent application filed July 10, 1998 (now USPN 6,182,197)". After careful review of the parent application's file wrapper, examiner did not find any portion of newly added limitations to the specification of current application (09/551,745). However, applicant is invited to the **US Patent** office to personally review the file wrapper.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application-by-application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

This application repeats a substantial portion of prior Application No. 09/113,752, now U.S. Patent 5,761,716, filed July 10, 1998, and adds and claims additional disclosure not presented in the prior application (specification, page 5, lines 9-11; page 10, lines 9-15, and claim 22). Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Yamato (US. 5,944,792).

As per claim 22, Yamato teaches a computer program device comprising:
A computer program storage device readable by a digital processing apparatus (col. 7, lines 37-47); and a program means on the program storage device and including instructions executable by the digital processing apparatus for performing method steps for satisfying one or more data access requests (col. 2, lines 26-42, the method steps comprising: responding with a memory system, to at least some of the data access requests based on respective priorities (deadline) and the data access requests being sent to the memory system (col. 14, lines 60-62; a data access request based on deadline time); wherein the memory system includes at least one controller (fig. 6, element 50) and at least one associated disk (fig. 6, element 10), the controller combining at least one (priority deadline) with ordering based on an internal state (transfer rate) of the associated disk (col. 12, lines 54-56; col. 14, lines 57-67, where buffer 53 enables data reading from storage device 10 at a convenient time prior to the

time for actually transferring the data to the client, where deadline time to be attached to a reading request of each block is obtained according to a transfer rate of the file).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mehdi Namazi whose telephone number is 703-306-2758. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 703-306-2903. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mehdi Namazi
Examiner
Art Unit 2188

September 4, 2004

Mano Padmanabhan
01/4/04
MANO PADMANABHAN
SUPERVISORY PATENT EXAMINER